



July 16, 1999

Ms. Susan Cory
General Counsel
Texas Worker's Compensation Commission
Southfield Building
4000 South IH-35
Austin, Texas 78704-7491

OR99-2003

Dear Ms. Cory:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 125928.

The Texas Workers' Compensation Commission (the "Commission") received a request for any complaints it has received against the requestor. You assert that the requested information is excepted from disclosure based on sections 552.102 and 552.108 of the Government Code and section 21.304 of the Labor Code.

Section 552.102(a) of the Government Code excepts from public disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The test to be applied to information claimed to be protected under section 552.102 is the same test formulated by the Texas Supreme Court in *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977) for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101. See *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Section 552.101, which excepts from disclosure information that is confidential by law, incorporates the common-law right to privacy. Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. See *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

We have reviewed the information and conclude that it does not implicate any individual's common-law privacy rights. Accordingly, the Commission may not withhold the information from the requestor based on section 552.102.

Section 552.108 of the Government Code states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure "if release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). You have not established that the information deals with the detection, investigation or prosecution of a crime. Consequently, section 552.108 is inapplicable to the information at issue.

Section 21.204 of the Labor Code reads as follows:

An officer or employee of the commission may not disclose to the public information obtained by the commission under Section 21.204 except as necessary to the conduct of a proceeding under this chapter.

This provision prohibits the Commission on Human Rights from disclosing to the public certain information it obtained in the course of investigating a complaint of employment discrimination. *See* Open Records Decision No. 534 (1989) (interpreting predecessor provision). This provision does not apply to the Commission.

In conclusion, the Commission has not established the applicability of an exception to required public disclosure. The Commission must release the information to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Kay Hastings
Assistant Attorney General
Open Records Division

KHH/eaf

Ref.: ID# 125928

Encl. Submitted documents